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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 14.02.2023

+ CM(M) 1370/2022

MUKESH KUMAR
versus

..... Petitioner

M/S. MOTHER DAIRY FRUIT
VEGETABLE PVT. LTD.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R. P. Pandey and Mr. Aman Kumar
Singh, Adv.

For the Respondent : Mr. Pramod Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 52869/2022 & CM APPL. 52870/2022 (Exemption)

1. Exemption allowed subject to all just exceptions.
2. Applications stand disposed of.

CM(M) 1370/2022 & CM APPL. 52868/2022 (Stay)

3. With the consent of the parties, the present petition is taken up for final disposal.
4. The petitioner challenges the order dated 26.09.2022 in CS DJ No. 163/2019 titled "*M/s. Mother Dairy Fruit and Vegetable Pvt. Ltd. Vs. Mukesh Kumar*" whereby the learned Trial Court has forfeited the right of the petitioner/defendant to file its written statement on the basis

that the stipulated period of 120 days from the date of service were already over as prescribed by the Commercial Courts Act, 2015 amending the Code of Civil Procedure, 1908.

5. Mr. Pandey, learned counsel appearing for the petitioner submits that the only ground on which the petitioner could not file the written statement was that the petitioner/defendant was a heart patient who had suffered a heart attack and is still under treatment and for that reason he was unable to give instructions to the advocate to file written statement on his behalf.

6. Mr. Pandey, learned counsel appearing for petitioner had filed certain medical documents along with the petition which this Court found to be deficient to explain the delay. Mr. Pandey, learned counsel appearing for the petitioner has handed over the Bench certain more medical documents purported to have been issued by the hospital where the petitioner is stated to have taken treatment in respect of his heart ailment.

7. On a perusal of the medical report including the discharge summary issued by the Moolchand hospital, it is revealed that the petitioner was admitted on 29.05.2022 and was discharged on 03.06.2022. The other medical documents which have been handed over are the prescriptions pertaining to the subsequent period right uptill 28.01.2023. On the aforesaid basis, Mr. Pandey, learned counsel appearing for the petitioner submits that petitioner may be granted one more opportunity to file his written statement which has been closed vide the impugned order.

8. Mr. Pramod Kumar, learned counsel appearing for the

respondent/plaintiff supports the reasons stated in the impugned order and submits that even after the passage of 120 days, the petitioner has not filed the written statement till today though he was stated to have been served on 12.05.2022.

9. Mr. Kumar, learned counsel appearing for the respondent submits that this is a commercial suit, and in terms of the judgment of the Hon'ble Supreme Court in *SCG Contracts (India) Private Ltd. Vs. K. S. Chamankar Infrastructure Private Ltd. and Others (2019) 12 SCC 210*, there is no way that the petitioner can be now permitted to file his written statement.

10. This Court has considered the aforesaid submissions made on behalf of the parties and perused the impugned order and the medical documents as filed and as handed over the Bench today by Mr. Pandey.

11. It is not disputed by petitioner that the petitioner was served with summons on 12.05.2022 and the 30 days period as stipulated under Commercial Courts Act, 2015 amending the Code of Civil Procedure, 1908 would expire on 11.06.2022. Admittedly, no written statement was filed within the aforesaid 30 days. The 90 days extension period subsequent to 30 days period, which is stipulated in the Order VIII Rule 1 CPC, 1908 as amended by the Commercial Courts Act, 2018 would have expired on 11.09.2022. It is also an undisputed fact that the petitioner/defendant did not file his written statement even within the extended period upto 11.09.2022.

12. It is only upon such failure of the petitioner to file his written statement within the stipulated period, that the impugned order was passed on 26.09.2022 forfeiting the right of the petitioner from filing his

written statement.

13. This Court has perused the judgment of Hon'ble Supreme Court in *SCG Contracts (India) Private Ltd.* (Supra) which has been followed by this Court in *Machine Tools Aids India Vs. M/s. GNC Infra LLP & Anr.* (Neutral Citation No. 2023/DHC/000160) and a number of other judgments, whereby this Court has held that the time provided under Order VIII Rule 1 CPC, 1908 as amended by the Commercial Court's Act, 2015 is mandatory and no leverage can be given to the defaulting party.

14. This Court has also taken into consideration the medical records which have been filed by the petitioner and from the perusal of those, it is clear that the hospitalization due to the heart ailment was only from 29.05.2022 through till 03.06.2022 which was still within the original 30 days period as provided under the Act.

15. There is no explanation other than to baldly submit that the petitioner was under medical treatment for the rest of the period, to justify the non-filing of the written statement w.e.f. 03.06.2022 right uptill 11.09.2022 when the 120 days would have elapsed.

16. In view of above and due to the lack of any explanation, much less a bona fide explanation, submitted on behalf of the petitioner, to not have filed the written statement within the 120 days period, this Court is of the considered opinion that there is no merit in the present petition and the petition is accordingly dismissed with no order as to costs.

TUSHAR RAO GEDELA, J .

FEBRUARY 14, 2023/ms